IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 449 of 2003
with
CIVIL APPLICATION NO. 1182 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PROJECT MANAGER,OIL & NATURAL GAS CORP.LTD.

Versus

STATE OF GUJARAT

Appearance:
1. First Appeal No. 449 of 2003
MR AJAY R MEHTA for appellant.
MR VB SETH, AGP, for respondent Nos.1 & 2
MR MD VAKIL for Respondent Nos. 3/1 to 3/5.

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 22/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The above-numbered appeal was ordered to be admitted vide order dated April 21, 2003. Mr.V.B.Seth, learned Assistant Government Pleader, appears on behalf of the respondent No.1 i.e. State of Gujarat and respondent No.2 i.e. Special Land Acquisition Officer, ONGC Campus, Khambhat, Kheda; whereas Mr.M.D.Vakil, learned advocate, appears on behalf of the respondent Nos.3/1 to 3/5 i.e. the original claimants. Having regard to the facts of the case and in view of joint request of the learned advocates of the parties, the appeal is taken up for final disposal today.

2. By filing the above-numbered appeal under Section 54 of the Land Acquisition Act and Section 96 of the Code of Civil Procedure, 1908, the appellant has challenged legality of judgment and award dated July 26, 2002, rendered by the learned Civil Judge (S.D.), Anand, in Land Acquisition Reference No. 539 of 1992, by which the appellant and the respondent Nos.1 & 2 are ordered to pay additional compensation of Rs.20/-per sq.mt.for the land acquired over and above the compensation of Rs.3.35 Ps. per sq.mt. offered by the Land Acquisition Officer by his award dated June 30, 1990.

3. A proposal was received by the State Government to acquire lands situated in village Divel, Taluka : Borsad, District : Kheda for public purpose of Drill-site K.T.A.B. of Oil and Natural Gas Commission. On receipt of the proposal, the State Government was satisfied that the lands situated in village Divel were likely to be needed for the said public purpose. Therefore, notification under Section 4 of the Land Acquisition Act,1894 ("the Act" for short) was issued, which was published in official gazette on December 31, 1988. The owners of the lands had objected to the acquisition. After considering the objections, necessary report was forwarded to the State Government as contemplated by Section 5-A(2) of the Act to the State Government. On perusal of the said report, the State Government was satisfied that the lands which were specified in the notification published under Section 4 of the Act were needed for public purpose of Drill-site K.T.A.B. of Oil and Natural Gas Commission. Therefore, declaration under Section 6 of the Act was made which was also published in the official gazette on November 30, 1989. Thereafter, notice was served on the owner of the land under Section 9 of the Act for determination of

compensation. The claimants had appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.20/-per sq.mt. However, having regard to the nature of the land acquired and the development in the area, the Land Acquisition Officer had offered compensation to the claimant at the rate of Rs.3.35 Ps. per sq.mt. by his award dated June 30, 1990. The claimant was of the view that determination of compensation by the Land Acquisition Officer was not proper and had, therefore, accepted the award under protest. By filing application, the claimant had requested the Special Land Acquisition Officer to refer the matter to the Court for determination of adequate compensation. Accordingly, reference was made to the District Court, Kheda which was registered as Land Acquisition Reference No. 539 of 1992. The case of the claimants was that the land acquired was forming part of a developing area and as it was fertile and claimants were reaping harvest for three seasons, they were entitled to higher compensation. What was claimed by the claimants was that the land acquired was near Nadiad and Anand Cities and, therefore, more compensation should be paid to them. The reference application was contested by the appellant and the respondent Nos.1 & 2. According to them, before determining the market value of the land acquired, the Special Land Acquisition Officer had taken into consideration fertility of the land, income derived by the claimants etc. and, therefore, reference application should be dismissed.

4. Having regard to the rival contentions of the parties, necessary issues for determination were raised by the reference Court. On behalf of the claimants, Mr. Dahyabhai Motibhai Parmar, who is one of the claimants, was examined, and he had given particulars such as location of land acquired, date on which notification under Section 4 of the Act was published in the official gazette, date on which declaration under Section 6 of the Act was made etc. According to him, the claimants were reaping three crops in a year and as they were deriving substantial income from the sale of agricultural produce, they were entitled to compensation at the rate of Rs.20/-per sq.mt. He had also produced copies of Village Form No.7/12 at Exh.11. The reference Court accepted the evidence tendered on behalf of the claimants and recorded a finding that the claimants are entitled to compensation at the rate of Rs.23.35 Ps.per sq.mt. by judgment and award dated July 26, 2002, which has given rise to above-numbered appeal.

5. The main contention, which is raised by Mr.Ajay

R.Mehta, learned advocate of the appellant, is that without any basis whatsoever, the reference Court has come to the conclusion that the claimants are entitled to additional compensation at the rate of Rs.20/-per sq.mt. over and above the compensation determined by the Land Acquisition Officer and as no reasons have been given for coming to the conclusion that the claimants are entitled to additional compensation at the rate of Rs.20/-per sq.mt., the appeal should be allowed. Mr.M.D.Vakil, learned advocate of the claimants, has fairly stated that no reasons have been assigned by the reference Court for awarding additional compensation at the rate of Rs.20/-per sq.mt.

6. We have considered the submissions made at the Bar and evidence adduced by the parties. A bare reading of impugned award makes it evident that no reasons are assigned by the reference Court for awarding additional/enhanced compensation. As reasons have not been assigned by the reference Court while determining additional compensation at the rate of Rs.20/-per sq.mt.,this Court is of the view that the appeal deserves to be accepted and matter should be remanded to the competent Court for redetermination of compensation payable to the claimants.

For the foregoing reasons, the appeal succeed. Judgment and award dated July 26, 2002 rendered by the learned Civil Judge (S.D.), Nadiad, in Land Acquisition Reference Nos.539 of 1992 is hereby set aside. The matter is remitted to the competent Court for redetermination of compensation payable to the claimants on merits. It is clarified that the claimants would be entitled to adduce evidence before the reference Court in support of their claim that they are entitled to compensation at the higher rate, and the appellant and respondent Nos.1 & 2 would be entitled to refute the same. Having regard to the facts and circumstances of the case, the reference Court is directed to decide the reference afresh as early as possible and preferably within three months from the date of receipt of the writ. The amount deposited by the appellant in the reference Court pursuant to order passed by the Division Bench on April 21, 2003, shall remain with the reference Court till the reference is decided afresh. R.& P. called, be sent to the reference Court immediately. The appeal is allowed to the extent indicated hereinabove. There shall be no orders as to costs.

CIVIL APPLICATION NO.1182 OF 2003

As the appeal is disposed of, Civil Application

for interim relief does not survive. Hence, it is dismissed. Rule is discharged. There shall beno order as to costs.

(J.M.Panchal,J.)

(Sharad D.Dave,J)

(patel)